

STATE OF MICHIGAN
COURT OF APPEALS

DENNIS L. STIMA, LAURA B. GRIFFITH,
TOMAS V. HRZEK, KERRY ANN MOUSTAKAS,
JACK STONE, and SUSAN M. STONE,

UNPUBLISHED
April 15, 1997

Plaintiffs/Counter Defendants-
Appellants,

v

No. 191229
Oakland Circuit Court
LC No. 94-483991-CZ

ROBERT G. HUTCHINSON, LISA A.
HUTCHINSON, GREGORY CHARLES
SALKLED, RENE M. SALKLED, JOSEPH L.
MANIACE, CATHERINE C. MANIACE,
BRADLEY FAIRMAN, KIM FAIRMAN, DAVID
TOTH and ANGELA TOTH, Jointly and Severally,

Defendants/Counter Plaintiffs-
Appellees.

Before: Fitzgerald, P.J., and Holbrook, Jr., and E.R. Post*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants' motion for summary disposition. We affirm in part and reverse in part.

This case involves the parties' rights to use a small piece of land on Lake Orion (the "disputed property"). The disputed property, known as Island Lake Road, was platted as a road. The plat stated that the street, alleys, walks, and parks shown on the plat were dedicated to the use of the public. Plaintiffs are homeowners surrounding the disputed property who want the property to be used only for access to their individual lots. Defendants are neighboring homeowners who would like to use the disputed property and any accretion or reliction as a park or public beach.

* Circuit judge, sitting on the Court of Appeals by assignment.

We first note that although the parties moved for summary disposition and the trial court's order is labeled as an order granting summary disposition, the hearing in this case actually constituted a bench trial and should be treated as such on appeal. Findings of fact by the trial court may not be set aside unless clearly erroneous. MCR 2.613(C). A finding is clearly erroneous when, although there is evidence to support the finding, this Court is left with a definite and firm conviction that a mistake has been made. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 171; 530 NW2d 772 (1995).

The first issue raised by the parties concerned defendants' rights to access Lake Orion from the disputed property. The right of the public to access a lake from a public way is determined by the scope of the plat dedication. *McCardel v Smolen*, 404 Mich 89, 97-101; 273 NW2d 3 (1978). The scope of the dedication is determined by the intent of the platter. In determining the intent of the platter, the court must look to the language of the dedication and the surrounding circumstances. *Thies v Howland*, 424 Mich 282, 293; 380 NW2d 463 (1985). Here, the parties agree about the language of the plat dedication and the surrounding circumstances. The trial court's finding that the configuration the road indicated that the road clearly terminated at the water is not clearly erroneous. The road configuration, together with the plat dedication, raised a conclusive presumption of public access. See, e.g., *Jacobs v Lyon Twp (After Remand)*, 199 Mich App 667, 671; 502 NW2d 382 (1993).

The next issue is whether the trial court erred in finding that defendants had a right to sunbathe and lounge on the disputed property. The extent to which the right of public access includes the right to sunbathe and lounge depends on the scope of the dedication. *McCardel v Smolen*, 404 Mich 89, 97. 273 NW2d 3 (1978); *Jacobs, supra* at 672. The intent of the dedication is to be determined from the language used in the dedication and the surrounding circumstances. *Id.* Here, the land was dedicated as a road and was twenty feet in width. No surrounding circumstances were presented to evidence an intent that, at the time the road was dedicated, the dedication of the road extended to shore activities such as sunbathing and lounging. The trial court's finding that sunbathing and lounging were within the scope of the plat dedication was not supported by any facts and is clearly erroneous. MCR 2.613(C).

Next, plaintiffs contend that the trial court erred in determining that they are not the fee owners of the disputed property. Plaintiffs apparently seek a determination that they own the fee in order to claim the riparian rights to the property, in the belief that such rights would allow them to keep defendants from using the disputed property. However, the ownership of riparian rights has no impact on the right of public access:

[T]he right of the public to enter and leave the water . . . depends on the scope of the dedication, not on who owns the riparian or littoral rights. The plaintiffs may own such rights . . . and yet there may have been a dedication to the public of a right to lounge and picnic on the [disputed property] and to enter and leave the water for swimming and boating purposes. [*McCardel, supra*, 404 Mich 101.]

Thus, resolution of this issue is not necessary to the determination of defendants' right of access to and use of the disputed property. Nonetheless, owners of land abutting a street are presumed to own the

fee to the property all the way to the center of the street, subject to the easement of public way. *Morrow v Boldt*, 203 Mich App 324, 329; 512 NW2d 83 (1994). This presumption applies absent a contrary intent on the part of the platter. It also applies where the street lies between a landowner and the water. *Thies v Howland*, 424 Mich 282, 291-293; 380 NW2d 463 (1985). Here, the only land abutting the disputed property belongs to plaintiffs. Thus, they are presumed to own the fee to the center of the street, absent a contrary intent on the part of the platter. Defendants failed to show that the language of the dedication and the surrounding circumstances evidence a contrary intent.

Last, plaintiffs claim that the trial court erred in finding that defendants are entitled to “water activity rights,” which include boating, fishing, swimming, and the temporary anchorage of boats. This Court has articulated the public’s right to use navigable waters:

The members of the public who are entitled to access to navigable waters have a right to use the surface of the water in a reasonable manner for such activities as boating, fishing, and swimming. An incident of the public’s right of navigation is the right to anchor boats temporarily. [*Jacobs, supra* at 671-672.]

Neither party disputes the fact that Lake Orion is navigable, or that the public has access to the lake via three public landings. Clearly, defendants are entitled to “water activity rights” in this case.¹ Thus, the trial court properly ruled that the public has a right to access the lake and use the water for boating, fishing, swimming, and the temporary anchorage of boats.

Affirmed in part and reversed in part.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Edward R. Post

¹ It is important to note that these rights are irrelevant to the disputed property. These are simply public rights in the use of navigable waters.